

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 7201 of 2020
M/s. Sarbamangala Service Station & anr.
Versus
Union of India & Ors.

For the petitioner : Mr. Debasish Saha
Mr. Moniruzzaman
Mr. Jahangir Badsa
.....Advocates

For the IOCL : Mr. Amit Kr. Nag
Mr. Partha Banerjee
.....Advocates

Heard lastly on : 10.04.2023

Judgment on : 13.09.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent authorities to cancel and set aside the impugned order dated 17.08.2020 and the order dated 19.05.2019 issued by the authority concerned and to allow the petitioner to resume retail outlet dealership service under the Indian Oil Corporation.

2. Learned counsel appearing on behalf of the petitioners submitted as follows. The writ petitioners have been running the Retail outlet through Indian Oil Corporation Limited (IOC) upon entering into an agreement since 22nd day of March, 2006 smoothly without any blemish from any corner. The Dispensing Unit (DU) was always kept in sealed condition by the expert/authorized person of the IOC. The writ petitioners had no access over the seal lock of the DU. On 19.05.2019 the inspectors came to inspect the DU of Retail Outlet and found everything in order i.e., (i) DU was in sealed/locked condition, (ii) Flow of oil of DU was in order, (iii) Stock Registrar was in order, (iv) No complaint from any customer. The Inspection Team has hatched up a story of snatching away of foreign particles from the DU whereby the DU hanged. The seal of the DU was opened by Inspection Team. The story of fixing and snatching of the said existing foreign particles by the writ petitioners did not arise at all. There was no consequential effect of existing 'foreign particles' i.e., (i) Shortage of flow of oil from DU, (ii) Any complaint from customer (iii) irregularities in register from actual stocks of oil reserve. The Guidelines Marketing Discipline Guidelines prescribed three type of punishments i.e., (i) Critical (ii) Major and (iii) Minor. Relying upon provision 8.2 (iv), the authority concerned terminated the agreement illegally. In absence of any Additional/Unauthorized fittings and gear inside the DU, the impugned termination was disproportionate and contrary to the Guidelines. The two judgments of the Hon'ble Apex Court i.e. M/s. Godrej Sara Lee Ltd. versus The Excise and Taxation Officer-cum-Assessing Authority & Ors. in Civil Appeal No. 5393 of 2010 and M/s. Magadh Sugar

& Energy Ltd. versus The State of Bihar & Ors. in Civil Appeal No. 5728 of 2021 entitled the writ petitioners to approach the High Court in the given facts and circumstances of this instant case, when the authority concerned issued impugned order without considering the records at hand and contrary to the Marketing Discipline Guidelines. The impugned order was perverse, arbitrary, whimsical and a colourable exercise of power.

3. Learned counsel appearing on behalf of the respondent submitted as follows. On or about March 22, 2006, the petitioner entered into an agreement with the Indian Oil Corporation to run an Outlet Retail Dealership in the name of M/s. Sarbamangala Service Station and thereafter, the petitioner obtained license Retail Outlet Dealership from Indian Oil Corporation. On May 19, 2019 the retail outlet of the petitioner was inspected by a Joint Inspection Team of Indian Oil Corporation and certain irregularities were observed in the Dispensing Unit by the Joint Inspection Team. The Joint Inspection was carried out in the presence of petitioner no. 2. The Joint Inspection Team witnessed while inspection of the Dispensing Unit that the petitioner 2 mischievously and forcefully snatched something out of the Dispensing Unit by opening the Electronic Top Box and ran away from the retail outlet premises which made the Dispensing Unit non-operational. The Joint Inspection thereafter witnessed that the E-CAL Cord of the dispensing unit was found hanging loose and the CPU card was uprooted from the base mounting plate because of forceful removable of the cable which was generally fitted tight with latch lock connector. Thereafter the petitioner no. 2 came back after some time and connected the dangling

cord with the CPU which made the Dispensing Unit operational. This act of the petitioner created suspicion in the mind of the Joint Inspection team which lead to the joint inspection team. Thereafter, a joint checking of the Dispensing unit was carried out on 19th May, 2019 along with the GVR representative and following observations were made in the service report -

a. Motherboard (CPU) was not in appropriate position however, the DU was running and dispensing as usual; b. Observed error log-E-01 sensor error, E-06, E-09, E-11, E-28, E-card con error, E-67 amongst other host of errors in the error history log dated 19.05.2019. As per the observations made in the service report the sales and supplies of the Retail unit was suspended by the IOC Limited. Along with the observation made in the service report, it was pertinent to mention that the OEM(GVR) Service Engineer, had reported stamping of E-28 ECAL CON error in the history log dated 19.05.2019 in the service report dated 21.05.2019. The joint inspecting team found various anomalies in the dispensing unit like the DU real time clock was ahead from the IST by approx. 35 minutes, the CPU card in the dispensing unit was not sealed as per model approval and only pulsar unit, metering unit and ECAL unit were found to be sealed. It was also submitted by the petitioner no. 2 to the high level team that the errant individual used to disconnect the ECAL cord from the CPU as and when the DU become non-operational on regular basis without logging any complaint on the eCTS and reconnect the same back to CPU to make the Dispensing Unit operational. Due to the observations made by the high level time, explanation was sought for from the petitioner by letter dated 21.05.2019

for the DU error logs and additional unauthorized fitting/microprocessor chip/electronic parts with software between e-calibration card and CPU board in order to tamper with the Dispensing Unit. The petitioner failed to give proper explanation to the letter dated 21.05.2019. The high level team after going through the observation made, OEM M/s GVR in email dated 22.08.2019 confirmed that Disconnection from ECAL from controller board clearly indicated attempt for tempering. E09 Error followed E28 error logged within few second in error history indicated suspicions of tampering, E28 error indicated that disconnection of ECAL card during power failure. Based on the observation dated 22.08.2019, a show cause notice for termination was issued to the petitioner by letter dated 18.10.2019 and 19.05.2019. In reply to the show cause notice of termination, petitioner no. 2 was not able to give proper explanation to show cause notice. Thereafter, based on the facts and reply of the dealer, it was found that the reply of the dealer was not satisfactory, and it was clear that the dealer has violated the following –

(a) Disconnection and reconnection of critical DU parts by the dealer himself without authorized OEM vendor; (b) DU Error logs E-1, E-6, E-09, E-11, E-28, E-67 observed in Error log history. The above action was a clear tempering of the dispensing unit, which had violated clause 5.1.4 of the Marketing Discipline Guidelines. Based on the observation it was clear that the dealer had caused tampering of the dispensing unit which fell under Critical Irregularities as mentioned in 8.2 (iv) of the Marketing Discipline Guidelines. As such, the petitioner was terminated. As per the Marketing Discipline Guideline, if a dealer is found to be tampering with the dispensing

unit the prescribed action under the guideline is termination at the first instance. It was clear that the petitioner tampered with the dispensing unit and as such the petitioner was terminated as per the Marketing Discipline Guideline under Clause 8.2 (iv). The Marketing Discipline Guideline provided for provision of appeal under clause 8.9. Despite knowing the Marketing Discipline Guidelines, the petitioner deliberately waived his right to exhaust the remedies available to the petitioner. The petitioner has come up before the writ Court without exhausting the remedies available to the petitioner. Therefore, the writ petition was liable to be dismissed. The petitioner failed to make out any extraordinary case before this Hon'ble Court as such the writ petition was liable to be dismissed. It was a settled principle of law that writ Court did not interfere in matters where there was disputed question of facts, and which are required to be provided through adducing evidence before the civil court. The respondent had given the writ petitioner ample opportunities to reply to the show cause notice. The petitioner failed to give any cogent explanation to the show cause notice. As such the petitioner was terminated by letter dated 17th August 2020. There was an arbitration clause in the dealership agreement and all disputes to be referred to arbitration. The termination notice had detailed particulars of all the events, charges and reasoning. The Hon'ble Supreme Court in the case of Indian Oil Corporation Ltd. versus Amritsar Gas Service and Ors. was pleased to settle that a dealership agreement, which was determinable in nature could not be specifically enforced and accordingly, even if the termination of the dealership agreement was found to be illegal, the

dealership could not be restored and the only remedy of the dealer lay in damages as quantified in the dealership agreement.

4. I heard the learned counsels for the parties and perused the writ petitions, the affidavits and the written notes of submissions.

5. It appears that on 19.05.2019 the petitioner's retail outlet was inspected by a joint inspection team of the oil company in the presence of the petitioner no. 2. It was alleged that at the time of inspection the petitioner no. 2 mischievously and forcefully snatched something out of the dispensing unit by opening the electronic top box and ran away from the premises. This made the dispensing unit non-operational. The team witnessed that ECAL Cord of the unit was hanging loose and the CPU card was uprooted from the base mounting plate because of such removal. Thereafter, the petitioner no. 2 came back and connected the dangling cord with the CPU which made the dispensing unit operational again. Such an absurd act on the part of the petitioner no. 2 created suspicion in the mind of the inspectors. Then a joint checking of the dispensing unit was carried out along with GVR representative and certain observations were noted. The mother board (CPU) was not in appropriate position. Error log-E-01 sensor error, E-06, E-09, E-11, E-28, E-card con error, E-67 among other hosts of error in the error history logged dated 09.05.2019 were noted. The team found various anomalies like the DU real time clock was ahead of the IST by about 35 minutes, the CPU card in the dispensing unit was not sealed as per model approval.

6. Thereafter, an explanation was sought from the petitioner by the letter dated 21.05.2019. But, the petitioner failed to give proper explanation. E-09 error followed by E-28 logged within few seconds in error indicated tampering. E-28 error indicated disconnection of E-CAL card. Therefore, a show cause notice for termination was issued to the petitioner by letters dated 18.10.2019 and 19.05.2019. In reply, the petitioner no. 2 was not able to give explanation to the satisfaction of the authorities. Thus, it appeared to the oil company that the dealer had caused tampering of the dispensing unit which failed under critical irregularities as mentioned in 8.2 (v) of the Marketing Discipline Guidelines. Therefore, the petitioner was terminated.

7. Thus, it appears that a prima facie case was made out for proceeding against the petitioner.

8. Thereafter, the oil company gave sufficient opportunity to the petitioners to explain the circumstances, which they apparently failed to do. Therefore, no question of violation of principles of natural justice arises.

9. In such circumstances, it will not be proper for this Court to enter into this disputed questions of facts, especially considering 8.9 of the Marketing Discipline Guidelines that provides for an appeal against such order of termination.

10. In view of the above, this Court is of the view that the petitioner has failed to make out an extraordinary case of violation of principles of natural justice so as to interfere with such matters, especially considering the fact that there is a provision for preferring an appeal.

11. In view of this, this Court finds no reason to interfere with the impugned orders.

12. Accordingly, the writ petition is dismissed.

13. However, there shall be no order as to costs.

14. The petitioner shall nevertheless be at liberty to prefer an appeal under the applicable Marketing Discipline Guidelines. In such event, the authorities shall consider the question of limitation, if any, leniently.

15. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)